IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2533 of 2017

K.G.V.Ganesh Sah

...Appellant

Vs

1.D.Murugammal

2.C.Pallavarayan

3.National Insurance Co. Ltd,
No.225, Gandhi Road,
Kancheepuram

4.M/s.Murugan Silks House,
Rep by its Partner K.G.Venkoba Sah,
No.29 A, Sheikpet Nadu Street,
Kancheepuram, Kancheepuram District.

5.The New India Assurance Co. Ltd.,
No.514-515, Gandhi Road,
Kancheepuram.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 19.09.2016 passed in MCOP No.85 of 2010 by the learned Motor Accident Claims Tribunal Authority, District Judge. District Court No.II, Kancheepuram and enhance the quantum of compensation to Rs.2,00,000/- by directing the 3rd respondent to pay the said compensation amount to the appellant by allowing this CMA.

For Appellant : Mr.N.Nagu Sah

For Respondents : No appearance for R1 and R4
Notice not ready for R2
Ms.R.Sreevidhya, for R3
Mr.J.Chandran, for R5

JUDGMENT

This Civil Miscellaneous Appeal was filed to set aside the award dated 19.09.2016 passed in MCOP No.85 of 2010 by the learned Motor Accident Claims Tribunal Authority, District Judge. District Court No.II, Kancheepuram and enhance the quantum of compensation to a sum of Rs.2,00,000/-.

2. The learned counsel for the appellant would submit that in the present case an accident was occurred between a two wheeler bearing Registration No. TN-21-C-1469 and an auto rickshaw bearing Registration No.No.TN-21-D-1659. The driver of the two-wheeler is the appellant herein, whereas the driver and owner of the said auto had been arrayed as first and second respondents. The third respondent herein is the insurance company of the said auto-rickshaw.

3. He would further submit that the findings of the Tribunal was that due to the rash and negligent driving on the part of the driver of the Auto/first respondent, the accident was occurred. After taking into consideration of the oral and documentary evidences, the Tribunal has come to the said conclusion. He would also submit that the said Auto was originally insured with the third respondent and the same was expired as on 07.04.2003. Further, he would contend that as per the submission made by the third respondent before the Tribunal, the said policy was not renewed subsequently, since the first respondent had paid the premium only on the next day, i.e., date of accident (08.04.2003). Further, he would contend that the insurance company was

supposed to have inspected the vehicle and thereafter issued the policy. However, since the accident took place at 02.30 pm, it is clear that without inspecting the vehicle, the insurance was issued. On the other hand, if there was inspection, the policy should have been issued prior to the accident. Therefore, he would request this Court to enhance the quantum of compensation to a sum of Rs.2,00,000/- and to direct the third respondent to pay the same.

4. In reply, the learned counsel for the insurance company/third respondent would submit that the policy was issued on 08.04.2003 at 03.20 pm and the said accident was occurred on 08.04.2015 at 02.30 pm. The said fact has already been established before the Tribunal. Therefore, he would contend that since there was no insurance policy at the time of accident, they are not in a position to settle the claims made by the appellant. Further, he would submit that after appreciating the oral and documentary evidences, the Tribunal had rightly came to conclusion that there was no policy against the vehicle and therefore, it has fastened the entire liability against the first and second respondents and hence, he prays for dismissal of this petition.

5. Upon hearing and perusal of documents, it is clear that the accident was took place at 02.30 pm on 08.04.2003 and on perusal of award, it is clear that the accident was occurred due to the rash and negligent driving of the driver of auto and the entire liability was fastened against the first and second respondents, who were the owner and driver of the said auto. Further, it is an admitted fact that there was no insurance at the time of accident. Since the same got expired on 07.04.2003, from 00:01 am to 03:20 pm on 08.04.2003, there was no insurance at all. The renewed insurance only came into effect from 03:20 pm on 08.04.2003. Therefore, since there was no insurance coverage at the time of accident, the third respondent is no way responsible for the said liabilities.

6. In view of the above, this Court feels that since all the aspect has been well considered by the Tribunal and there are no merits in the submissions made by the learned counsel for the appellant, this award need no interference.

7. Accordingly, this Civil Miscellaneous Appeal is dismissed. No cost.

04.07.2023

Index: Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
nsa

To:

The Motor Accident Claims Tribunal,
District Court II,
Kancheepuram.

KRISHNAN RAMASAMY,J.

nsa

C.M.A.No.2533 of 2017

04.07.2023